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11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF WASHINGTON

13 BARBARA ANDERSON, on behalf of  
14 herself and all others similarly situated,

15 Plaintiff,

16 v.

17 TECK METALS, LTD., a Canadian  
18 corporation and TECK RESOURCES,  
19 LTD., a Canadian corporation,

20 Defendants.

No. CV-13-420-TOR  
CLASS ACTION COMPLAINT

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## I. INTRODUCTION

1. It is a fundamental principle of law that if you engage in a dangerous activity, you have to pay the consequences of any injuries you cause. Plaintiff Barbara Anderson who was diagnosed with breast cancer and diverticulitis, brings this personal injury lawsuit for strict liability, nuisance, and negligence against defendants on behalf of herself and as a representative of a proposed class of similarly situated individuals. Plaintiff and the proposed class seek a declaratory judgment that the release of toxic and hazardous substances by Teck Metals, Ltd. and Teck Resources, Ltd. through the operation of the Trail Smelter is a public nuisance and an abnormally dangerous activity for which Teck should be held strictly liable for all personal injuries.

2. Plaintiff also seeks a partial class action to resolve common issues concerning strict liability, negligence, and nuisance claims brought by her and the proposed class.

## II. JURISDICTION AND VENUE

3. Subject matter jurisdiction is proper under the Court's diversity jurisdiction, 28 U.S.C. § 1332(a)(2), because the matter in controversy exceeds \$75,000 and there is complete diversity of citizenship between the parties. Defendants are Canadian corporations, plaintiff is a resident of the State of Washington, and the proposed class does not include any Canadian citizens. Subject matter jurisdiction is also proper under 28 U.S.C. § 1331 because plaintiff asserts a nuisance claim under federal common law.

4. The Court's exercise of specific jurisdiction over defendants is appropriate under the facts of this case. As set forth below, defendants have intentionally released millions of tons of toxins and hazardous chemicals into the atmosphere and into the Columbia River, knowing that they have contaminated the Upper Columbia River region and knowing or having reason to know that these

1 substances have caused bodily injury to plaintiff and members of the proposed  
2 class.

3 5. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial  
4 part of the events or omissions giving rise to the claims occurred in this judicial  
5 district.

### 6 **III. PARTIES**

7 6. Barbara Anderson is a resident of Northport, Washington, where she  
8 has lived with her family since 1975. Ms. Anderson was diagnosed with breast  
9 cancer in 2012 and inflammatory bowel disease (diverticulitis) in 2010.

10 7. Teck Resources, Ltd. is a Canadian corporation, headquartered in  
11 Vancouver, British Columbia, Canada.

12 8. Teck Metals, Ltd. is a Canadian corporation, headquartered in Trail,  
13 BC. Teck Metals, Ltd. is registered as an extra provincial company under the laws  
14 of British Columbia and is a wholly owned subsidiary of Teck Resources, Ltd.  
15 (collectively “Teck”). Since 1896, Teck and its predecessors have owned and  
16 operated the metal and fertilizer production facilities located in Trail, B.C.,  
17 Canada, collectively referred to herein as the “Trail Smelter.”

### 18 **IV. STATEMENT OF FACT**

#### 19 **A. Teck has a Long History of Dumping Toxins into the Upper Columbia** 20 **Region**

21 9. EPA is studying hazardous waste contamination in the Upper  
22 Columbia River from the U.S.-Canadian border to the Grand Coulee Dam and  
23 surrounding upland areas.<sup>1</sup> A smelter in Trail, BC, about 10 miles north of the  
24 U.S.-Canadian border, is believed to be the principal source of the contamination.<sup>2</sup>

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25 <sup>1</sup> EPA, Upper Columbia River Investigation Frequently Asked Questions (Apr.  
26 2005), *available at* [www.epa.gov/region10/pdf/sites/ucr/fact\\_sheets/ucr\\_faq.pdf](http://www.epa.gov/region10/pdf/sites/ucr/fact_sheets/ucr_faq.pdf).

27 <sup>2</sup> *Id.*  
28

1 The Trail Smelter is a metal and fertilizer production facility on the Columbia  
2 River, which Teck and its predecessors have owned and operated since 1896.<sup>3</sup>  
3 Northport, Washington, also on the Columbia River, lies approximately 20 miles  
4 downstream from the smelter. The air pollution from Trail that travels south  
5 remains trapped in the Columbia River Valley, where Northport is located.<sup>4</sup>

6 10. Since the early 20th century, people in Northport and the Upper  
7 Columbia River waste contamination site have borne the brunt of the toxic  
8 discharges and emissions from the Trail Smelter. The first serious impacts to be  
9 mapped were the airborne emissions of sulfur dioxide. In 1925, Teck's discharge  
10 of sulfur dioxide increased from 4,700 to 10,000 pounds per month.<sup>5</sup>

11 11. The following USDA map illustrates the impact of Teck's sulfur  
12 dioxide emissions on forests in Stevens County in 1931<sup>6</sup>:

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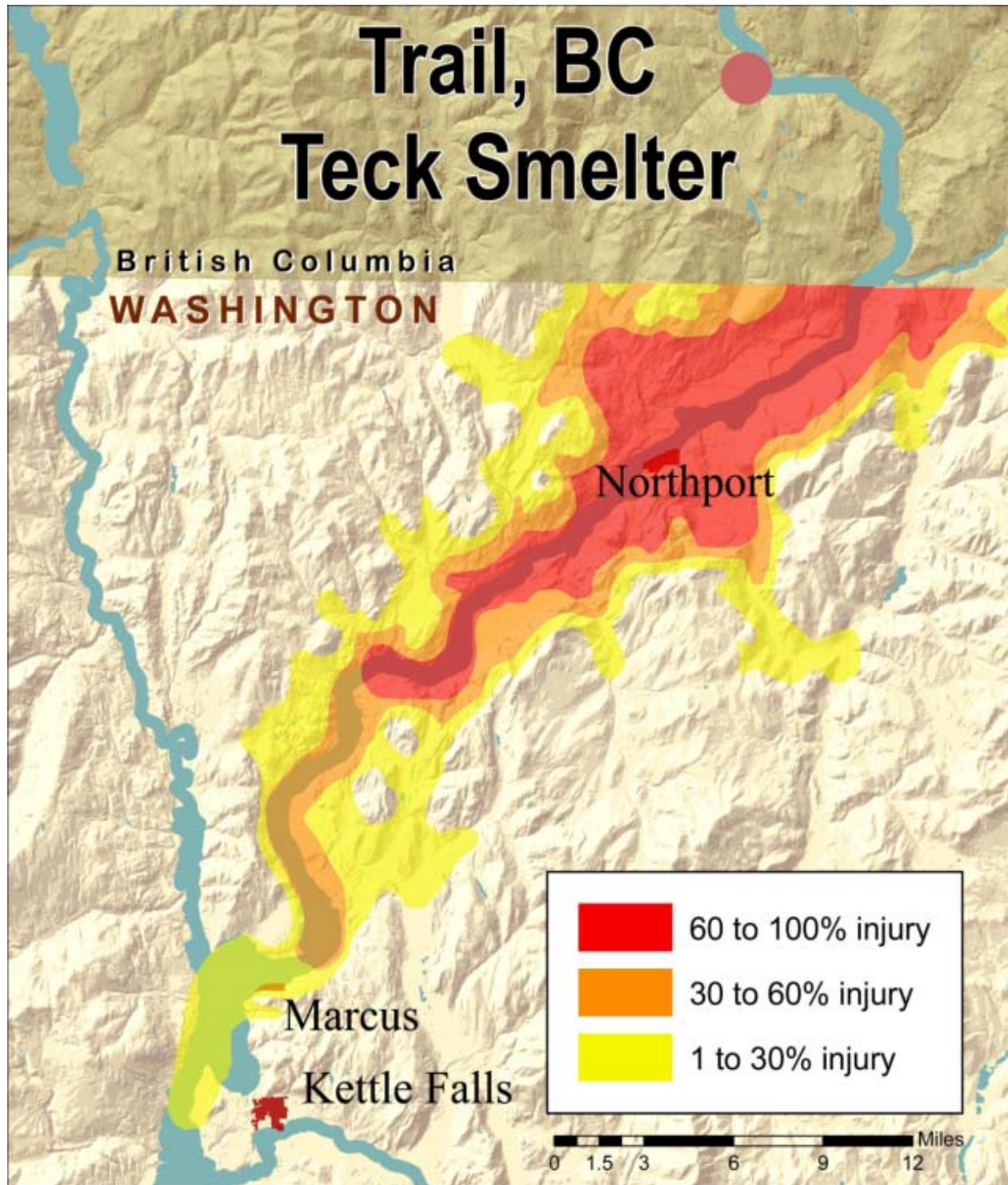
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17 <sup>3</sup> *Pakootas v. Teck Cominco Metals, Ltd.*, No. 04-CV-00256-LRS (E.D.  
18 Wash.), Findings of Fact and Conclusions of Law (Dkt. No. 1955). ¶ 3.

19 <sup>4</sup> EPA, Human Health Risk Assessment Work Plan for the Upper Columbia  
20 River Site, March 2009 at 35.

21 <sup>5</sup> *Through the years: The Trail, B.C., smelter*, The Spokesman (June 21, 2009)  
22 available at <http://www.spokesman.com/stories/2009/jun/21/through-the-years/>.

23 <sup>6</sup> “Areas of injury to the forests in northern Stevens County, Washington, due to  
24 the effects of sulphur dioxide in the air,” Whitney J. Fraser, *et al.*, Seatac Poster  
25 slide, [www.eiltd.net/docs/SEATAC\\_Poster.pdf](http://www.eiltd.net/docs/SEATAC_Poster.pdf) (“Seatac slide”). Authors cite  
26 USDA, 1936 (source: US National Archives, digitized by Environment  
27 International Ltd).  
28





1           12. Northport farmers complained to Washington and Ottawa that the air  
2 pollution was damaging their crops and sickening animals. The damage to the  
3 farmlands in the Northport area was so severe that the U.S. and Canadian  
4 governments formed an international tribunal to resolve the conflict between the  
5 Canadian-owned Trail smelter and Northport area residents. In 1941 the tribunal  
6 awarded damages to the Northport area farmers and ordered Canadian authorities  
7 to monitor Teck's emissions.

8           13. Despite changes in its technology, Teck continues to emit substantial  
9 quantities of sulfur dioxide. Canadian authorities report that between 2002 and  
10 2012 the Trail Smelter emitted approximately 50,000 metric tons (tonnes) of sulfur  
11 dioxide.<sup>7</sup>

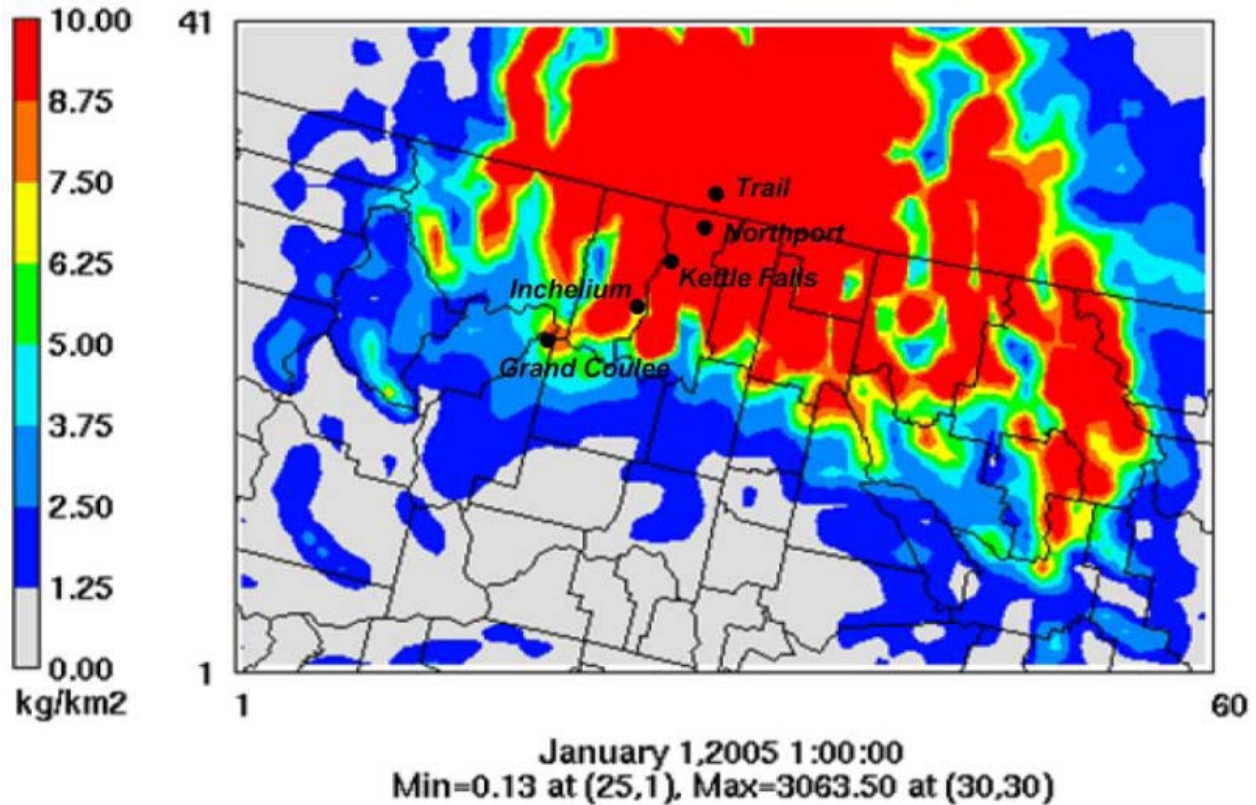
12           14. Between 1921 and 2005, it is estimated that Teck also emitted 38,465  
13 tons of zinc, 22,688 tons of lead, 1,225 tons of arsenic, 1,103 tons of cadmium, and  
14 136 tons of mercury into the air.<sup>8</sup> Using the EPA's Community Multiscale Air  
15 Quality model to simulate the movement of gaseous and particulate species in the  
16 atmosphere, one study has depicted the cumulative spread of lead from the Trail  
17 Smelter from 1921 to 2005 as follows:<sup>9</sup>

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21           <sup>7</sup> Environment Canada, Historical Substance Reports for Teck Metals Ltd. -  
22 Trail Operations, *available at* [http://www.ec.gc.ca/inrp-npri/donnees-](http://www.ec.gc.ca/inrp-npri/donnees-data/index.cfm?do=facility_history&lang=En&opt_npri_id=0000003802&opt_report_year=2012)  
23 [data/index.cfm?do=facility\\_history&lang=En&opt\\_npri\\_id=0000003802&opt\\_rep](http://www.ec.gc.ca/inrp-npri/donnees-data/index.cfm?do=facility_history&lang=En&opt_npri_id=0000003802&opt_report_year=2012)  
24 [ort\\_year=2012](http://www.ec.gc.ca/inrp-npri/donnees-data/index.cfm?do=facility_history&lang=En&opt_npri_id=0000003802&opt_report_year=2012).

25           <sup>8</sup> *Pakootas*, Written Direct and Rebuttal Test. of Paul Queneau, (Dkt No. 1661-  
26 2). ¶ 121, Table 4.

27           <sup>9</sup> Seatac slide (authors cite ICF Report #11-018 as source).  
28



15. Metals deposited from smelter air emissions may also find their way into the soils, sediments, and fish of the Upper Columbia River Basin.<sup>10</sup> Studies indicate that several nearby lakes, previously thought to be minimally impacted by local human activities, are also contaminated by heavy metals.<sup>11</sup> Elevated concentrations of antimony, arsenic, cadmium, lead, mercury, and zinc were found in lake sediments along the Upper Columbia River.<sup>12</sup> Antimony, lead, and cadmium substantially exceeded sediment quality guidelines in several of these lakes, which fall within the zone of influence of the Trail smelter.<sup>13</sup>

<sup>10</sup> SeaTac slide.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*



1           16. Teck's discharges of toxins into the Columbia River have also  
2 affected the Northport and Upper Columbia River region. The Trail Smelter  
3 produces slag as a by-product of high-temperature recovery of metals.<sup>14</sup> Teck's  
4 slag consists primarily of silica, lime and iron, as well as base metals, including  
5 zinc, lead, copper, arsenic, cadmium, barium, antimony, chromium, cobalt,  
6 manganese, nickel, selenium and titanium.<sup>15</sup>

7           17. According to the EPA, people are at risk from slag exposure when  
8 they breathe in the fine particles, get it on their skin or eat it. The slag is also an  
9 ecological hazard, killing aquatic life and filling in cracks in the riverbed, reducing  
10 habitat for small aquatic organisms.<sup>16</sup>

11           18. Between 1930 and 1995, Teck discharged at least 9.97 million tons of  
12 slag directly into the Columbia River via outfalls at its Trail smelter.<sup>17</sup> This  
13 discharge was intentional and made with knowledge that the waste slag contained  
14 metals.<sup>18</sup> At least 8.7 million of the at least 9.97 million tons of slag discharged by  
15 Teck from its Trail Smelter has been transported by the Columbia River.<sup>19</sup> The  
16 slag included 389,150 tons of zinc.<sup>20</sup> Although Teck's slag discharges were

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17           <sup>14</sup> *Pakootas*, Findings of Fact and Conclusions of Law. ¶ 4.

18           <sup>15</sup> *Id.*

19           <sup>16</sup> Karen Dorn Steele, *EPA Goes After Canada Smelter; Teck Cominco Asked to*  
20 *Pay, or Face Superfund*, Spokesman Review, Oct. 5, 2003, available at  
21 <http://www.spokesmanreview.com/news-story.asp?date=100503&id=s1420547>.

22           <sup>17</sup> *Pakootas*, Findings of Fact and Conclusions of Law. ¶ 5.

23           <sup>18</sup> *Id.*

24           <sup>19</sup> *Id.*, ¶ 6.

25           <sup>20</sup> *Pakootas*, Written Direct and Rebuttal Test. of Paul Queneau. ¶ 12, Table 1.

1 supposed to have ended in 1996, there have been a few additional releases during  
2 plant breakdowns. For example, on April 7, 1998, 3.4 tons were released.<sup>21</sup>

3 19. Teck has also intentionally discharged non-slag discharges (effluent)  
4 into the Columbia River.<sup>22</sup> The following is a photograph of effluent from Teck's  
5 lead and Zinc smelter in Trail, BC in 1988.<sup>23</sup>



17 20. From 1923-2005 Teck's effluent contained approximately 132,000  
18 tons of hazardous substances, including 108,000 tons of zinc, 22,000 tons of lead,  
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21 <sup>21</sup> Karen Dorn Steele, *Smelter Dumped Tons of Mercury Records Show Scope of*  
22 *River Pollution*, Spokesman Review, June 20, 2004. ("Steele 2003").

23 <sup>22</sup> *Pakootas*, Findings of Fact and Conclusions of Law. ¶ 8.

24 <sup>23</sup> *Teck Smelter's Downstream US Neighbours May Sue Over Pollution, Illness*,  
25 Common Sense Canadian, Nov. 25, 2013, available at  
26 [http://commonsensecanadian.ca/REPORTED\\_ELSEWHERE-detail/teck-smelters-](http://commonsensecanadian.ca/REPORTED_ELSEWHERE-detail/teck-smelters-downstream-us-neighbours-may-sue-pollution-illness/)  
27 [downstream-us-neighbours-may-sue-pollution-illness/](http://commonsensecanadian.ca/REPORTED_ELSEWHERE-detail/teck-smelters-downstream-us-neighbours-may-sue-pollution-illness/).  
28

1 200 tons of mercury, 1,700 tons of cadmium, and 270 tons of arsenic.<sup>24</sup> Teck knew  
2 that its discarded effluent contained at least lead, zinc, cadmium, arsenic, copper,  
3 and mercury.<sup>25</sup> Nearly all of the effluent has been transported by the Columbia  
4 River downstream of the international border into Washington.<sup>26</sup>

5 **B. Teck has Repeatedly Leaked Toxins in the Upper Columbia River**  
6 **Region**

7 21. Teck also leaks and spills toxins at the Trail Smelter. A major spill  
8 occurred from March 19 to March 22, 1980, when the smelter released  
9 approximately 6,300 pounds of mercury into the Columbia River while flushing  
10 sediments from a condensing tower.<sup>27</sup> Teck did not report the spill to authorities  
11 for five weeks.<sup>28</sup> Teck also accidentally released approximately 15 tons of sulfuric  
12 acid into the air on March 19, 1980, producing a “visible plume.”<sup>29</sup>

13 22. These are not isolated incidents. Between September 1987 and May  
14 2001 Teck reported 86 spills, including 1,923 pounds of mercury.<sup>30</sup> An April 1990  
15 spill of 300 to 400 gallons of concentrated sulfuric acid into the river was not  
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17 <sup>24</sup> *Pakootas*, Findings of Fact and Conclusions of Law. ¶ 8.

18 <sup>25</sup> *Id.*

19 <sup>26</sup> *Id.*, ¶ 9.

20 <sup>27</sup> Karen Dorn Steele, *Smelter Dumped Tons of Mercury Records Show Scope of*  
21 *River Pollution*, Spokesman Review, June 20, 2004. (“Steele 2003”).  
22

23 <sup>28</sup> *Id.*

24 <sup>29</sup> *Id.*

25 <sup>30</sup> *Id.*; see also Upper Columbia River Expanded Site Inspection Report  
26 Northeast Washington TDD: 01-02-0028 Mar. 2003, Table 2-2 (listing all reported  
27 spills between 1987 and 2001).  
28

1 reported for 14 hours because the plant alarm failed.<sup>31</sup> In 1992, the smelter spilled  
 2 855 pounds of sulfur dioxide and 187 pounds of mercury into the river.<sup>32</sup> In 1993  
 3 Teck accidentally released sediments containing cadmium and arsenic.<sup>33</sup> A spill of  
 4 1,000 gallons of sulfuric acid into the river in June 1995 was attributed to a “lack  
 5 of attention” on the part of a worker, according to a provincial report.<sup>34</sup>

6 23. The spills continued. On May 28, 2008, the Trail Smelter accidentally  
 7 released an estimated 100 gallons of hydrofluoric acid into the Columbia River.  
 8 The acid contained about 2,100 pounds of lead.<sup>35</sup>

9 24. Similarly, on September 13, 2010, Environment Canada was notified  
 10 that contaminated groundwater from the Teck Metals Ltd. facility was leaking into  
 11 Stoney Creek, which flows directly into the Columbia River.<sup>36</sup> On October 7,  
 12  
 13  
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15 <sup>31</sup> *Id.*

16 <sup>32</sup> *Id.*

17 <sup>33</sup> *Id.*

18 <sup>34</sup> *Id.*

19 <sup>35</sup> Teck Cominco Smelter Spills Lead and Acid Into Columbia River,  
 20 SteelGuru, May 31, 2008, *available at*  
 21 [http://www.steelguru.com/international\\_news/Teck\\_Cominco\\_smelter\\_spills\\_lead](http://www.steelguru.com/international_news/Teck_Cominco_smelter_spills_lead_and_acid_into_Columbia_River/47998.html)  
 22 [and acid into Columbia River/47998.html](http://www.steelguru.com/international_news/Teck_Cominco_smelter_spills_lead_and_acid_into_Columbia_River/47998.html).  
 23

24 <sup>36</sup> Environment Canada News Release (Trail, B.C. – May 13, 2011), *Teck*  
 25 *Metals Ltd. Agrees to Pay \$100,000 to Environmental Damages Fund for Recent*  
 26 *Chemical Spills*, [http://www.ec.gc.ca/default.asp?lang=En&n=714D9AAE-](http://www.ec.gc.ca/default.asp?lang=En&n=714D9AAE-1&news=C41D7D44-F77E-418F-B017-30400C1C306C)  
 27 [1&news=C41D7D44-F77E-418F-B017-30400C1C306C](http://www.ec.gc.ca/default.asp?lang=En&n=714D9AAE-1&news=C41D7D44-F77E-418F-B017-30400C1C306C).  
 28

1 2010, Environment Canada was notified of a 33 pound mercury spill into the  
2 Columbia River from one of the outfalls from the Teck Metals Ltd. facility.<sup>37</sup>

3 25. On March 5, 2011, Teck discharged approximately 350,000 liters of  
4 highly caustic effluent into the Columbia River through an effluent system at Teck  
5 Metals in Trail, BC.<sup>38</sup> The toxic release occurred following the disposal of a 50%  
6 sodium hydroxide solution into the plant's effluent stream.<sup>39</sup> The unlawful  
7 discharge was not reported to Environment Canada and the Provincial Emergency  
8 Program until several days after the incident.<sup>40</sup>

9 **C. The EPA Upper Columbia Region is Designated a Superfund Cleanup**  
10 **Site**

11 26. In August 1999, the Colville Confederated Tribes petitioned the EPA  
12 to conduct an assessment of hazardous substance contamination at the Upper  
13 Columbia River. The Tribes expressed concerns about risks to people's health and  
14 the environment from contamination in the river.<sup>41</sup> The EPA completed its

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15 <sup>37</sup> *Id.*; *In Brief: Smelter Spills Mercury Into River*, Spokesman Review, Nov. 20,  
16 2010, available at [http://www.spokesman.com/stories/2010/nov/20/in-brief-](http://www.spokesman.com/stories/2010/nov/20/in-brief-smelter-spills-mercury-into-river/)  
17 [smelter-spills-mercury-into-river/](http://www.spokesman.com/stories/2010/nov/20/in-brief-smelter-spills-mercury-into-river/).

18 <sup>38</sup> Environment Canada News Release (Trail, B.C. – Nov. 6, 2013), *Teck Metals*  
19 *Ltd. Sentenced to Pay \$210,000 for Discharging Sodium Hydroxide Into the*  
20 *Columbia River BC*, available at  
21 [http://www.ec.gc.ca/default.asp?lang=En&n=714D9AAE-1&news=CCDC0D95-](http://www.ec.gc.ca/default.asp?lang=En&n=714D9AAE-1&news=CCDC0D95-A3A9-4E82-AFC5-9AD2EE6B770D)  
22 [A3A9-4E82-AFC5-9AD2EE6B770D](http://www.ec.gc.ca/default.asp?lang=En&n=714D9AAE-1&news=CCDC0D95-A3A9-4E82-AFC5-9AD2EE6B770D).

23 <sup>39</sup> *Id.*

24 <sup>40</sup> *Id.*

25 <sup>41</sup> EPA, *EPA to Investigate Upper Columbia River Pollution*, June 2004,  
26 available at  
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1 preliminary assessment of the Upper Columbia River in December 2000 and  
2 collected samples in 2001 to learn more about the types and amounts of pollution  
3 in the sediments. The EPA concluded that further detailed investigation of  
4 contamination in the Upper Columbia River was warranted.<sup>42</sup> The EPA also  
5 recognized that Teck's Trail Smelter is the largest source of heavy metal  
6 contaminants in the region and that the Trail area has been designated a  
7 contaminated site by Environment Canada.<sup>43</sup>

8 27. The Upper Columbia River study site extends downstream from the  
9 Canadian border to the Grand Coulee Dam in Washington State, a distance of  
10 about 150 river miles. The study includes not only the river and the reservoir but  
11 also adjacent lands that may have been adversely affected.<sup>44</sup>

12 28. The EPA completed its investigation in 2003 and concluded that the  
13 Upper Columbia River site was eligible for inclusion on CERCLA's National  
14 Priorities List (a.k.a the "Superfund List").<sup>45</sup> Because it determined that Teck was  
15 the principal source of the contamination in the area, the EPA attempted to  
16 negotiate with Teck over the terms for investigating the region for over a year.<sup>46</sup>

17 [http://yosemite.epa.gov/R10/CLEANUP.NSF/UCR/fact+sheets/\\$FILE/Upper%20](http://yosemite.epa.gov/R10/CLEANUP.NSF/UCR/fact+sheets/$FILE/Upper%20Columbia%20fs%20fin%206-10-04.pdf)  
18 [Columbia%20fs%20fin%206-10-04.pdf](http://yosemite.epa.gov/R10/CLEANUP.NSF/UCR/fact+sheets/$FILE/Upper%20Columbia%20fs%20fin%206-10-04.pdf).

19 <sup>42</sup> *Id.*

20 <sup>43</sup> *Upper Columbia River/Lake Roosevelt River Mile 597 to 745 Preliminary*  
21 *Assessment Report*, Washington TDD: 99-10-0002, Dec. 2000, available at  
22 [http://www.colvilletribes.com/preliminary\\_assessment\\_december\\_2000.php](http://www.colvilletribes.com/preliminary_assessment_december_2000.php).

23 <sup>44</sup> Upper Columbia River Project, Overview, available at [http://ucr-](http://ucr-rifs.com/project-overview/)  
24 [rifs.com/project-overview/](http://ucr-rifs.com/project-overview/).

25 <sup>45</sup> *Pakootas v. Teck Cominco Metals, Ltd.*, 646 F.3d 1214, 1216 (9th Cir. 2011).

26 <sup>46</sup> *Id.*

1 After negotiations failed, EPA issued an unilateral administrative order in  
2 December 2003 to require Teck to complete the study consistent with CERCLA.  
3 Teck did not comply with the order, and the EPA took no action to enforce it.<sup>47</sup>

4 29. The U.S. Geological Survey released a report in 2004 from its study  
5 of sediment cores taken at six locations in middle and lower reaches of Lake  
6 Roosevelt.<sup>48</sup> According to the report, decades of liquid effluent from the Trail  
7 Smelter contributed most of the zinc, lead, cadmium, and other trace elements  
8 detected in the sediment samples.<sup>49</sup> The results also indicate that slag particles  
9 found in some sediments showed signs of weathering and breaking down,  
10 demonstrating that slag is not inert and may be an ongoing source of contamination  
11 in the lake.<sup>50</sup> Contaminants of potential concern in the Upper Columbia River  
12 include heavy metals such as arsenic, cadmium, copper, lead, mercury, and zinc,  
13 which the Trail Smelter releases.<sup>51</sup>

14 30. Individual tribe members, Joseph A. Pakootas and Donald R. Michel,  
15 brought a citizen suit against Teck to enforce the EPA's unilateral administrative  
16 order.<sup>52</sup> While the litigation was pending, the EPA and Teck settled, effective  
17 June 2006.<sup>53</sup> Under the terms of the agreement, Teck Cominco agreed to fund and  
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19 <sup>47</sup> *Pakootas*, 646 F.3d at 1216-17.

20 <sup>48</sup> EPA, Upper Columbia River Investigation Frequently Asked Questions (Apr.  
21 2005).

22 <sup>49</sup> *Id.*

23 <sup>50</sup> *Id.*

24 <sup>51</sup> *Id.*

25 <sup>52</sup> *Pakootas*, 646 F.3d at 1217.

26 <sup>53</sup> *Id.*

1 conduct scientific studies, under the oversight of the EPA, with participation from  
2 the Canadian Government, the US Department of the Interior, the State of  
3 Washington, and the Spokane and Confederated Colville Tribes to assess human  
4 health and the environment in the Upper Columbia River Basin.<sup>54</sup> As a result of  
5 the *Pakootas* lawsuit, Teck has been held responsible for all environmental  
6 assessment and clean-up costs.

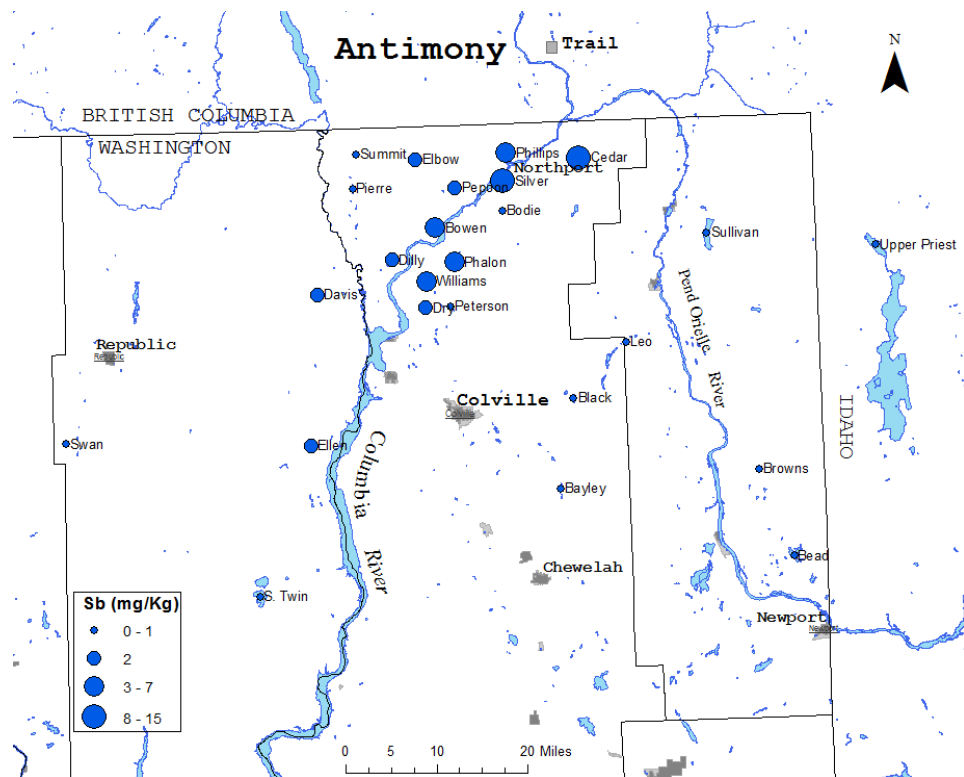
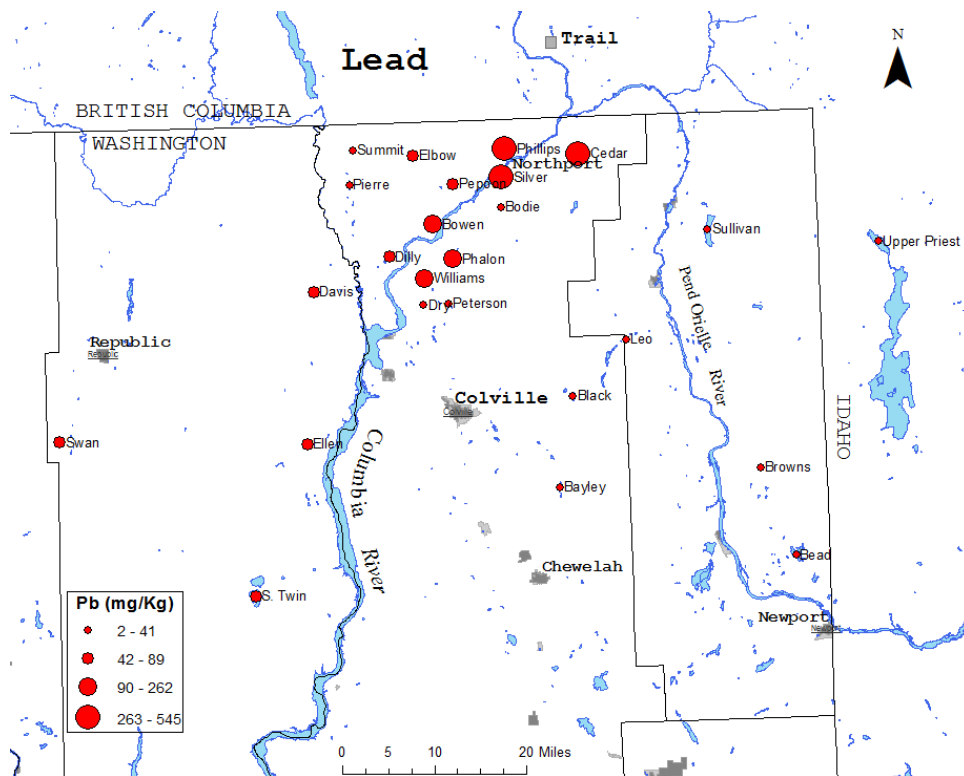
7 31. A 2012 study by Washington Department of Ecology confirms  
8 elevated levels of lead, antimony, mercury, zinc, cadmium, arsenic, in surface  
9 soils, local lakes, and wetlands near U.S.-Canadian border along the Upper  
10 Columbia River Valley.<sup>55</sup> These findings are consistent with Teck emissions and  
11 discharges. The contaminants are concentrated in the Northport area<sup>56</sup>:

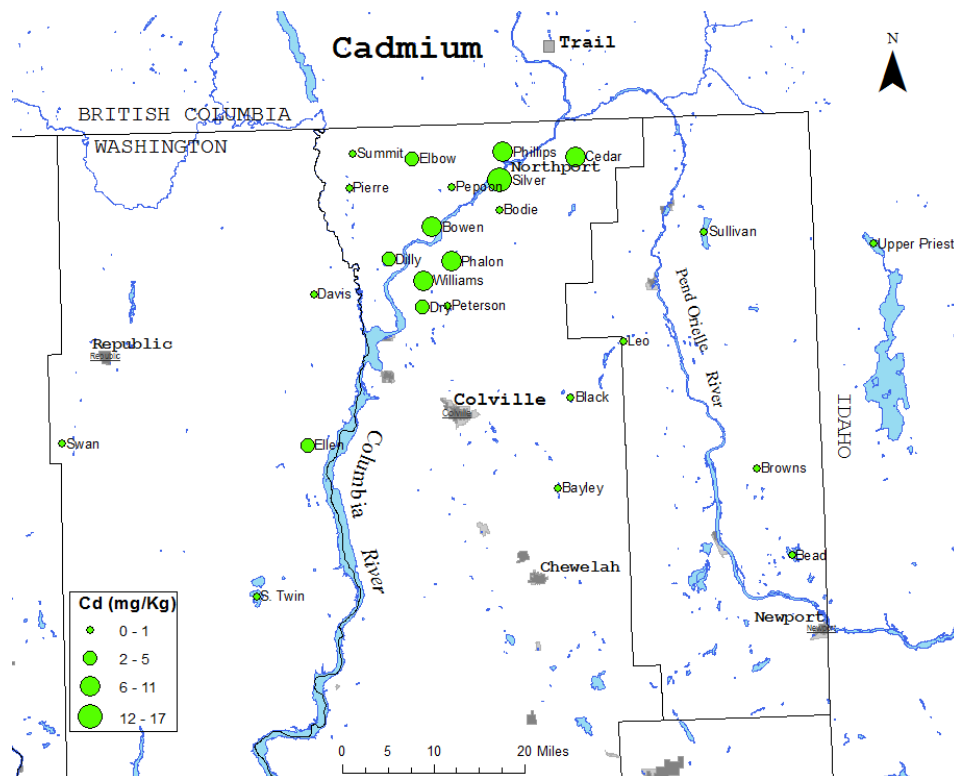
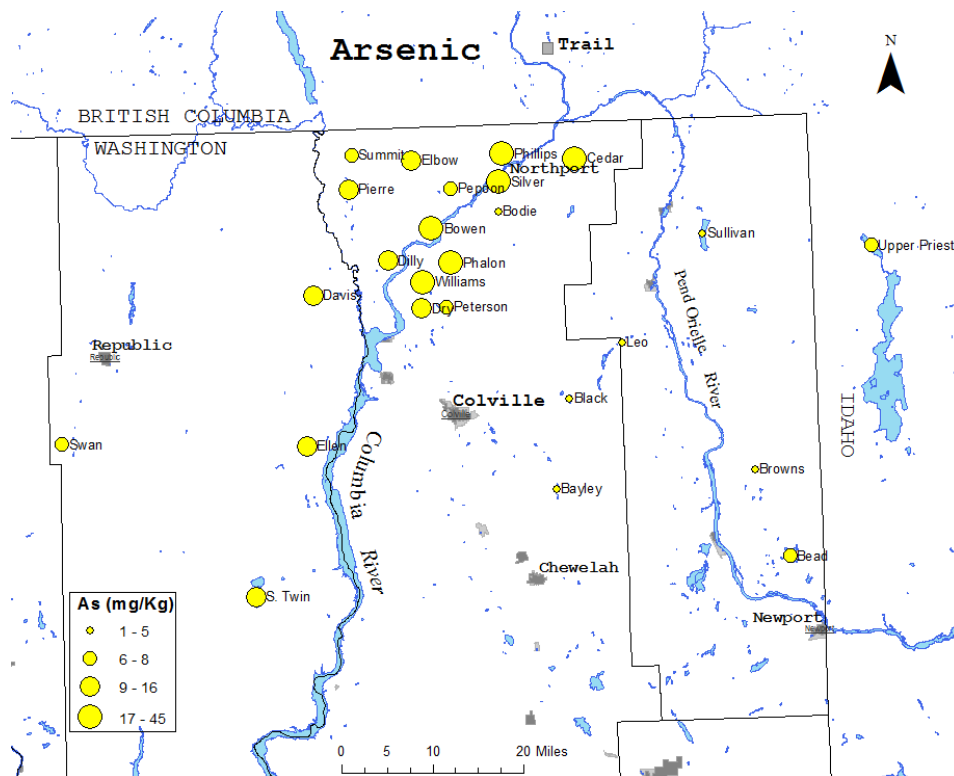
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20 <sup>54</sup> Teck Cominco Press release, June 2, 2006, *available at*  
21 <http://www.teckchile.com/Generic.aspx?PAGE=Teck+Site%2fMedia+Pages%2fMedia+Detail&releaseNumber=06-21-TC&portalName=tc>.

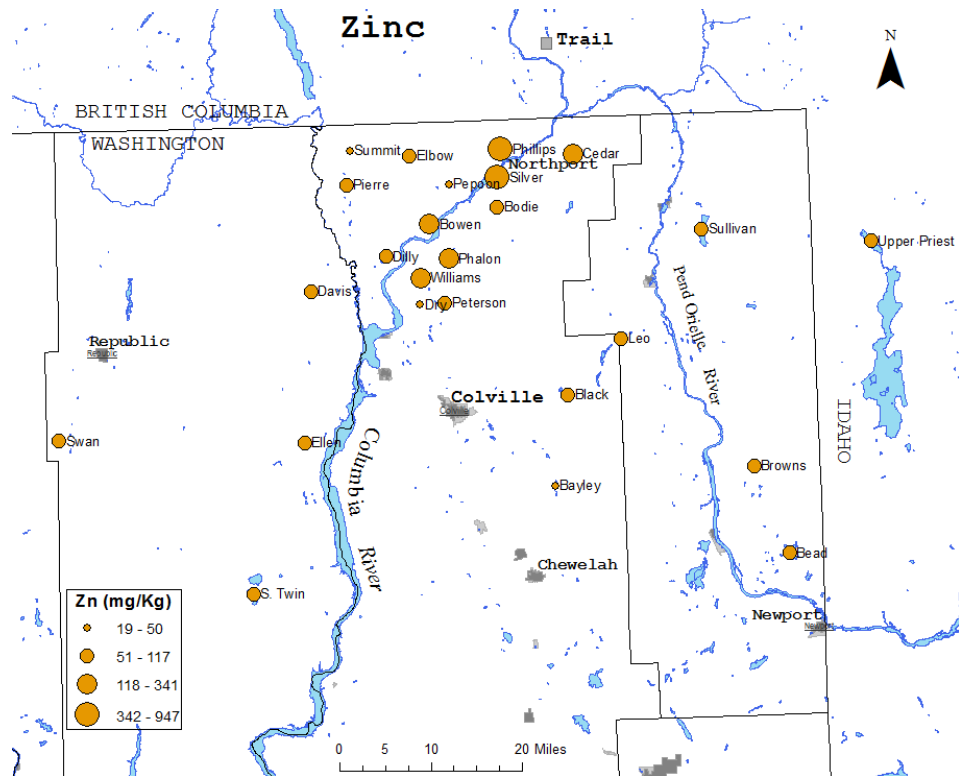
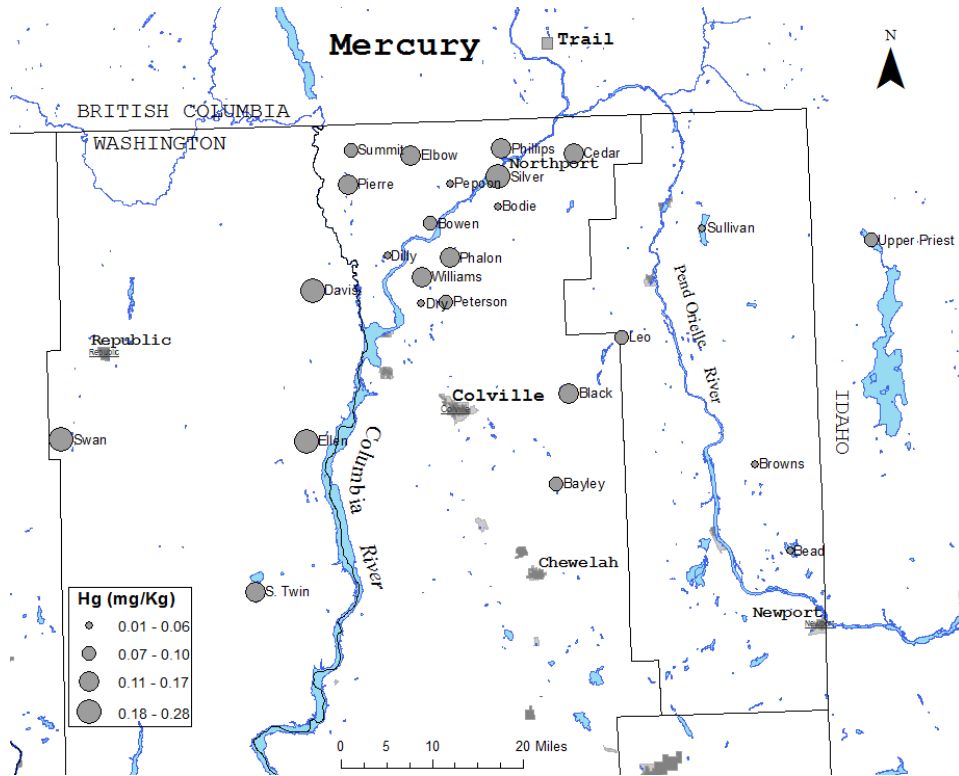
23 <sup>55</sup> Washington Department of Ecology, Publication No. 13-03-012, *Metals*  
24 *Concentrations in Sediments of Lakes and Wetlands in the Upper Columbia River*  
25 *Watershed: Lead, Zinc, Arsenic, Cadmium, Antimony, and Mercury*, May 2013,  
26 *available at* <https://fortress.wa.gov/ecy/publications/SummaryPages/1303012.html>.

27 <sup>56</sup> *Id.*, Figures 13-18 (reproduced here).  
28









**D. Northport Residents Report a Disproportionate Occurrence of Diseases.**

32. In 1995, the Agency for Toxic Substances and Disease Registry (ATSDR) was petitioned to prepare a public health assessment to address reported health concerns in Northport, Washington associated with the Trail Smelter.<sup>57</sup> Residents complained of inflammatory bowel disease, thyroid disorders, sinus irritation, eye irritation, chronic nosebleeds, respiratory problems, and cancer.<sup>58</sup> Between 1995 and 1999, ATSDR reviewed the available environmental sampling data. The agency issued a report in 2004, in which it concluded that site posed an indeterminate public health risk because it lacked data concerning the contamination levels throughout the Northport area.<sup>59</sup>

33. As part of the CERCLA environmental assessment the EPA is responsible for conducting a human health risk assessment. Washington Department of Ecology has asked the EPA to assess the potential health risks in residential and recreational areas near the U.S.-Canadian border.<sup>60</sup> To date, no studies have been conducted.

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<sup>57</sup> ATSDR, Public Health Assessment for Northport Area Northport, Stevens County, Washington, June 24, 2004 at 1, *available at* <http://www.ntis.gov/search/product.aspx?ABBR=PB2004105906>.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Washington Department of Ecology, Upper Columbia River Lake Roosevelt Fact Sheet, *available at* <https://fortress.wa.gov/ecy/gsp/CleanupSiteDocuments.aspx?csid=12125> ; *see also* Ecology webpage, *available at* <https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=12125>.

1           34. In 2010 a former Northport resident, Jamie Paparich (who also blogs  
2 for the Northport Project) joined forces with a volunteer organization, Citizens for  
3 a Clean Columbia (“CCC”) to conduct an informal health survey of current and  
4 former residents of the Northport area.<sup>61</sup> The survey followed the Center for  
5 Disease Control’s guidelines for conducting epidemiological studies and was  
6 assisted by CCC member, Mindy Smith, M.D. A summary of the survey results  
7 was published in the CCC newsletter in January 2011 and on the Northport Project  
8 blog. The survey indicated that Northport residents suffered from thyroid or  
9 endocrine disorders at six times the rate of the general population and also found  
10 elevated rates of arthritis, cancer, inflammatory bowel disease, brain aneurisms,  
11 and Parkinson’s disease.<sup>62</sup>

12           35. The results of the informal study caught the attention of a team of  
13 researchers led by Josh Korzenik, director of the Crohn’s and Colitis Center at  
14 Brigham and Women’s Hospital, one of Harvard Medical School’s teaching  
15 hospitals.<sup>63</sup> One hundred-nineteen current and former Northport residents took part  
16 in a health survey designed by Dr. Josh Korzenik; 17 had confirmed cases of either  
17 ulcerative colitis or Crohn’s disease.<sup>64</sup> “That’s about 10 to 15 times what we’d  
18 expect to see in a population the size of Northport,” said Korzenik, “I’m not aware  
19

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20  
21           <sup>61</sup> Citizens for a Clean Columbia Newsletter, Jan. 2011, *available at*  
22 [cleancolumbia.org/documents/newsletter/01\\_2011.pdf](http://cleancolumbia.org/documents/newsletter/01_2011.pdf).

23           <sup>62</sup> *Id.*

24           <sup>63</sup> Becky Kramer, Researcher seeking clues behind clusters of disease in tiny  
25 town, The Spokesman-Review, Aug. 12, 2012, *available at*  
26 <http://www.spokesman.com/stories/2012/aug/12/illness-and-angst/>.

27           <sup>64</sup> *Id.*  
28

1 of any other cluster like it.”<sup>65</sup> The cluster is also unusual, given Northport’s rural  
 2 settings; inflammatory bowel disease is more commonly found in urban areas.<sup>66</sup>

3 36. Dr. Korzenik’s team presented their data at a forum in San Diego in  
 4 June 2013. Publication of the results is anticipated soon.

5 **E. The Chemicals Teck’s Trail Smelter Emitted are Known to Cause**  
 6 **Disease.**

7 37. The Trail Smelter has released high volumes of toxins and hazardous  
 8 substances that have made their way into the Northport and Upper Columbia  
 9 region, including: aluminum, antimony, arsenic, cadmium, copper, lead,  
 10 manganese, mercury, silica, sulfur dioxide, thallium, and zinc.<sup>67</sup>

11 38. These toxins may be a substantial cause of the elevated rates of  
 12 thyroid and endocrine disorders, arthritis, cancer, inflammatory bowel disease,  
 13 brain aneurisms, and Parkinson’s disease in the Northport area. Many of these  
 14 toxins have been known to cause respiratory diseases, eye irritation and chronic  
 15 nosebleeds, which also have been reported in the Northport area.

16 39. As an example, mercury has been identified as a potential cause of  
 17 inflammatory bowel disease.<sup>68</sup> Teck emitted 136 tons of mercury into the air from

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18 <sup>65</sup> *Id.*

19 <sup>66</sup> Ing Shian Soon, *et al.*, *The Relationship Between Urban Environment and the*  
 20 *Inflammatory Bowel Diseases: A Systematic Review And Meta-Analysis*, BMC  
 21 *Gastroenterology*. 2012; 12: 51. Published online 2012 May 24. doi:  
 22 10.1186/1471-230X-12-51

23 <sup>67</sup> See Environment Canada, Historical Substance Reports for Teck Metals Ltd.  
 24 - Trail Operations; *Pakootas Findings of Fact and Conclusions of Law*.

25 <sup>68</sup> Curtis E. Cummings, Kenneth D. Rosenman, *Ulcerative Colitis Reactivation*  
 26 *After Mercury Vapor Inhalation*, *Journal: American Journal of Industrial Medicine*,  
 27 vol. 49, no. 6, pp. 499-502, 2006, *available at*  
 28

1 1926-2005<sup>69</sup> and discharged at least 200 tons of Mercury into the Columbia  
 2 River.<sup>70</sup> Washington Department of Ecology found elevated levels of mercury in  
 3 the Northport area. Aluminum also has been associated with bowel disorders.<sup>71</sup>  
 4 Teck emitted 6,864 metric tons (tonnes) of aluminum in the last ten years alone.<sup>72</sup>

5 40. Cadmium, lead and silica are all believed to cause breast cancer.<sup>73</sup>  
 6 Washington Department of Ecology has found elevated levels of cadmium and

7  
 8 [http://onlinelibrary.wiley.com/doi/10.1002/ajim.20306/abstract;jsessionid=1D0A0](http://onlinelibrary.wiley.com/doi/10.1002/ajim.20306/abstract;jsessionid=1D0A0F3C7B8246F07199EE8359067F95.f02t03)  
 9 [F3C7B8246F07199EE8359067F95.f02t03](http://onlinelibrary.wiley.com/doi/10.1002/ajim.20306/abstract;jsessionid=1D0A0F3C7B8246F07199EE8359067F95.f02t03).

10 <sup>69</sup> Ing Shian Soon, *et al.*, *The Relationship Between Urban Environment and the*  
 11 *Inflammatory Bowel Diseases: A Systematic Review And Meta-Analysis*, BMC  
 12 Gastroenterology. 2012; 12: 51. Published online 2012 May  
 13 24. doi: 10.1186/1471-230X-12-51, *available at*  
 14 [www.biomedcentral.com/content/pdf/1471-230X-12-51.pdf](http://www.biomedcentral.com/content/pdf/1471-230X-12-51.pdf).

15 <sup>70</sup> Environment Canada, Historical Substance Reports for Teck Metals Ltd. -  
 16 Trail Operations. Teck also spilled mercury into the Columbia River.

17 <sup>71</sup> Agency for Toxic Substances and Disease Registry (ATSDR). Toxicological  
 18 profile for aluminum. Atlanta, GA. Sep. 2008, *available at*  
 19 <http://www.atsdr.cdc.gov/>.

20 <sup>72</sup> Environment Canada, Historical Substance Reports for Teck Metals Ltd. -  
 21 Trail Operations. Teck also spilled mercury into the Columbia River.

22 <sup>73</sup> Nagata, C., *et al.* *Cadmium exposure and the risk of breast cancer in*  
 23 *Japanese women*. Breast Cancer Res. Treat. 2013 Feb.; 138(1):235-9; Melissa  
 24 Healy, *Cadmium in Diet is Linked to Higher Breast Cancer Risk*, Los Angeles  
 25 Times, Mar. 15, 2012, *available at*  
 26 [http://articles.latimes.com/2012/mar/15/health/la-he-cadmium-breast-cancer-](http://articles.latimes.com/2012/mar/15/health/la-he-cadmium-breast-cancer-20120315)  
 27 [20120315](http://articles.latimes.com/2012/mar/15/health/la-he-cadmium-breast-cancer-20120315); Alatis, O.I., *et al.* *Lead exposure: a contributing cause of the current*  
 28



1 lead in the Northport area. Teck emitted 22,688 tons of lead into the atmosphere  
 2 between 1921 and 2005.<sup>74</sup> Slag Teck dumped into the Columbia River contained  
 3 7,300 tons of lead.<sup>75</sup> Teck dumped an additional 22,000 tons of lead through non-  
 4 slag effluent.<sup>76</sup> Teck emitted 1,103 tons of cadmium into the atmosphere between  
 5 1921 and 2005<sup>77</sup>, and dumped 1,700 tons of cadmium into the Columbia River as  
 6 effluent.<sup>78</sup> Teck's slag also contained an unknown amount of silica.<sup>79</sup>

7 41. Plaintiff Anderson has lived in Northport since 1975. She was  
 8 recently diagnosed with diverticulitis and with breast cancer. Five of thirteen  
 9 toxins released from the smelter in substantial volume are toxins associated with  
 10 her diseases, and it is more probable than not that her exposure to these toxins  
 11 caused her injuries.

12  
 13  
 14 *breast cancer epidemic in Nigerian women*. Biol Trace Elem Res. 2010 Aug.;  
 15 136(2):127-39 [lead]; Cantor, K.P.; *et al. Occupational exposures and female*  
 16 *breast cancer mortality in the United States*. J Occup. Environ. Med. 1995 Mar.;  
 17 37(3):336-48 [lead]; Weiderpass, E.; *et al. Breast cancer and occupational*  
 18 *exposures in women in Finland*. Am J Ind Med. 1999 Jul.; 36(1):48-53 [silica].

19 <sup>74</sup> *Pakootas*, Written Direct and Rebuttal Test. of Paul Queneau. ¶ 121, Table  
 20 4.

21 <sup>75</sup> *Pakootas*, Findings of Fact and Conclusions of Law. ¶ 5.

22 <sup>76</sup> *Id.*, ¶ 8.

23  
 24 <sup>77</sup> *Pakootas*, Written Direct and Rebuttal Test. of Paul Queneau. ¶ 121, Table  
 25 4.

26 <sup>78</sup> *Pakootas*, Findings of Fact and Conclusions of Law. ¶ 8.

27 <sup>79</sup> *Id.*, ¶ 4.  
 28

1           42. On information and belief, Teck's toxic releases have directly and  
2 proximately caused numerous other current and past residents of Northport and the  
3 surrounding area to be personally injured, including thyroid and endocrine  
4 disorders, arthritis, cancer, inflammatory bowel disease, brain aneurisms,  
5 Parkinson's disease, respiratory diseases, eye irritation, and chronic nosebleeds.

6                           **V. CLASS ACTION ALLEGATIONS**

7           43. Plaintiffs bring this class action pursuant to Rule 23 of the Federal  
8 Rules of Civil Procedure, as representatives of the following class:

9                       All current or former residents of EPA's designated  
10                      Upper Columbia River waste contamination study site,  
11                      who have suffered a personal injury as a direct result of  
12                      Teck's environmental contamination in this region.  
13                      Excluded from the Class are all Canadian citizens.

14           44. The Class consists of potentially 100 or more class members,  
15 including current residents of the Upper Columbia River Region of the State of  
16 Washington and former residents, who may be geographically dispersed  
17 throughout the United States. Joinder of all class members is impracticable. An  
18 effective and practicable manner of notice to such members of the Class can be  
19 fashioned by the Court.

20           45. Plaintiff is a member of the Class and plaintiff's claims are typical of  
21 those of the Class because all members of the Class have suffered a personal injury  
22 as a result of Teck's wrongful conduct in violation of federal common law  
23 nuisance and Washington negligence and strict liability laws. Plaintiff seeks a  
24 declaratory judgment that Teck's operation of the Trail Smelter is a public  
25 nuisance and an abnormally dangerous activity. Plaintiff also seeks a partial  
26 certification to resolve common issues of class members' nuisance, strict liability  
27 and negligence claims. Plaintiff's interests in the declaratory judgment and the  
28 resolution of the common issues are consistent with, and not antagonistic to, those  
of the members of the Class.

1           46. Plaintiff, as a representative of all Class members, will fairly and  
2 adequately protect the interests of the Class. Plaintiff has engaged counsel  
3 experienced and competent in class action and personal injury litigation, including  
4 litigation involving the mining industry.

5           47. Class certification is appropriate under Federal Rule of Civil  
6 Procedure Rule 23(b)(2) because Teck has acted on grounds that generally apply to  
7 members of the proposed Class, so that the declaratory relief plaintiff seeks is  
8 appropriate respecting the Class as a whole.

9           48. Class certification is also appropriate under Federal Rule of Civil  
10 Procedure Rule 23(c)(4) because plaintiff's claims raise the following issues  
11 common to the proposed Class:

12           a. With respect to plaintiff's and Class members' nuisance claims,  
13 that Teck contaminated the Upper Columbia River region through toxic airborne  
14 emissions or discharges into the Columbia River and that its conduct has  
15 substantially and unreasonably interfered with the public's health;

16           b. With respect to plaintiff's and Class members' negligence  
17 claims, that Teck owed a duty of care, what was the standard of care, and whether  
18 Teck breached its duty of care when it allowed toxins to threaten the health of  
19 residents of the Upper Columbia River region; and

20           c. With respect to plaintiff's and Class members' strict liability  
21 claims, whether Teck's operation of the Trail Smelter is an abnormally dangerous  
22 activity.

23           49. The resolution of these common issues substantially advances the  
24 litigation as a whole because no member of the Proposed Class can prevail without  
25 proving these elements. Plaintiff knows of no difficulty that would prevent this  
26 case from being maintained as a partial class action because these elements can be  
27 proven for all Class members by use of common evidence.  
28

1           50. Class action treatment is also a superior method for the fair and  
 2 efficient adjudication of common issues. Teck has acted on grounds generally  
 3 applicable to all Class members in that Teck's toxic airborne emissions or  
 4 discharges into the Columbia River have caused each to incur personal injury.  
 5 Class certification of common issues will materially advance the litigation and  
 6 conserve scarce judicial resources. By contrast, separate determinations of these  
 7 common issues by individual Class members would create the risk of inconsistent  
 8 or varying adjudications with respect to individual Class members that would  
 9 establish incompatible standards of conduct for defendant.

## 10                                   **VI. CLAIMS FOR RELIEF**

### 11       **A. First Cause of Action: Strict liability/ abnormally dangerous activity**

12           51. Plaintiff incorporates by reference every allegation set forth above.

13           52. Operation of the Trail Smelter constitutes an abnormally dangerous  
 14 activity because Teck releases and has released hazardous and toxic substances,  
 15 which create a high risk of significant harm.

16           53. The release of toxic substances at the Trail Smelter has directly and  
 17 proximately caused personal injury to plaintiff and the proposed Class.

18           54. Plaintiff has been damaged in an amount that will be determined at  
 19 trial.

### 20       **B. Second Cause of Action: Public nuisance**

21           55. Plaintiff incorporates by reference every allegation set forth above.

22           56. Teck's release of hazardous and toxic substances constitutes a  
 23 substantial and unreasonable interference with public rights, including public  
 24 property, health, safety and comfort of the general public.

25           57. Teck has known or should have known about the potential health,  
 26 safety and environmental dangers these substances pose to the public.  
 27  
 28

1           58. Plaintiff and the proposed Class have standing to pursue damages for  
2 Teck's public nuisance because they have been personally injured as a direct and  
3 proximate cause of Teck's public nuisance.

4           59. Plaintiff has been damaged in an amount that will be determined at  
5 trial.

6 **C. Third Cause of Action: Negligence**

7           60. Teck had a duty of reasonable care in the operation and management  
8 of the Trail Smelter to prevent injury to plaintiff and members of the Class.

9           61. Teck negligently, carelessly and recklessly generated, handled, stored,  
10 treated, disposed of, and failed to control and contain the metals and other toxic  
11 substances at the Trail Smelter, resulting in the release of toxic substances and  
12 exposure of plaintiff and the proposed Class.

13           62. Teck also negligently failed to warn plaintiff and Class members of  
14 the release of the metals and other toxic substances into the environment and  
15 community surrounding the Trail Smelter and of the reasonably foreseeable effects  
16 of such releases.

17           63. Teck also negligently failed to warn plaintiff and Class members of  
18 the accumulation of toxic substances into the environment and community  
19 surrounding the Trail Smelter and of the reasonably foreseeable effects of toxins.

20           64. Plaintiff and the proposed Class have been personally injured. Their  
21 injuries were directly and proximately caused by Teck's negligence.

22           65. Plaintiff has been damaged in an amount that will be determined at  
23 trial.

24 **VII. PRAYER FOR RELIEF**

25           WHEREFORE, plaintiff, on behalf of herself and the other members of the  
26 Class, respectfully pray:  
27  
28

1           A.     That the Court determine that this action may be maintained as a class  
2 action pursuant to Rule 23 of the Federal Rules of Civil Procedure, and direct that  
3 reasonable notice of this action be given to the Class;  
4

5           B.     That the acts alleged herein be adjudged and decreed to be unlawful in  
6 violation of the federal and state law and the Court declare Teck's release of toxic  
7 and hazardous substances to be a public nuisance and an abnormally dangerous  
8 activity for which Teck should be held strictly liable for all personal injuries  
9 directly and proximately caused by its operation of the Trail Smelter;  
10

11           C.     That plaintiff recover all measures of damages allowable under state  
12 law, and that judgment be entered against defendants;  
13

14           D.     That plaintiff recover pre- and post-judgment interest as provided by  
15 law; and  
16

17           E.     That the Court order such other and further relief as the Court deems  
18 just, necessary and appropriate.  
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1 DATED this 19th day of December, 2013.

2 Respectfully submitted,

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